

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRUCE JOHNSON,

Defendant.

2:10-CR-583-RLH-GWF

ORDER

(Motion for Certificate—#49)

Before the Court is Defendant Johnson's Request for a Certificate of Appealability (#49, filed August 15, 2012), of the Court's denial of his 28 U.S.C. §2255 Motion to Vacate.

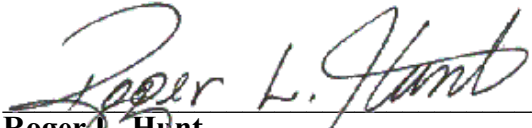
Defendant Johnson was sentenced on August 23, 2011, pursuant to a plea agreement wherein he pled to Possession of Crack Cocaine in the amount of 43 grams. Judgment entered the following day. Two other counts were dismissed. No appeal of his sentence was filed. On July 11, 2012, nearly a year later, he filed a Motion to Vacate under §2255, arguing that because the Guideline ratio for crack cocaine has changed, he was entitled to a shorter sentence.

Unfortunately for him, his sentence was based upon the crack cocaine ration. Rather, because he was designated as a career offender, under U.S.S.G. §4B1.1, (he had three convictions resulting in incarceration and multiple convictions for drug trafficking) what would have been an Adjusted Offense Level of 28, was required to be raised to 34, with a reduction of 3 levels for acceptance of responsibility. His Total Offense Level then became 188-235 months, with a recommendation of 188 months by the Probation Officer, and the Government. His counsel argued for 120 months. The Court departed, based on §3553(a) factors, and sentenced Johnson to 160 months.

1 Because his Guideline calculations were not based upon the crack cocaine ratio, his
2 motion is without merit. The Court finds that jurists of reason would not find it debatable whether his
3 petition states a valid claim of denial of a constitutional right or that the district court was correct in
4 its ruling. *See Slack v. McDaniel*, 529 U.S. 473, 485 (2000).

5 Accordingly, IT IS HEREBY ORDERED that Defendant Johnson's Request for a
6 Certificate of Appealability (#49) is DENIED.

7 Dated: August 27, 2012.

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10 **Roger L. Hunt**
11 **United States District Judge**
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